

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

RADIAN ASSET ASSURANCE, INC.,
a New York corporation,

Plaintiff,

vs.

No. CIV 09-0885 JB/DJS

COLLEGE OF THE CHRISTIAN BROTHERS OF
NEW MEXICO, known as THE COLLEGE OF
SANTA FE; CHRISTIAN BROTHERS OF THE
COLLEGE OF SANTA FE COMMUNITY d/b/a
THE COLLEGE OF SANTA FE, a New Mexico
corporation; DR. MARK LOMBARDI, an individual;
JERRY BRISSON, an individual, and SHARON
BAIN, an individual,

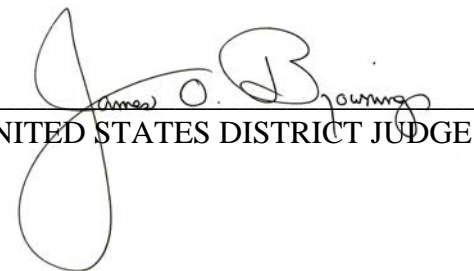
Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Plaintiff Radian Asset Assurance Inc.'s Motion for Voluntary Dismissal and Supporting Memorandum, filed January 7, 2011 (Doc. 312) ("Motion"). The Court held a hearing on February 11, 2011. The primary issue is whether, under rule 41 of the Federal Rules of Civil Procedure, the Court should grant Plaintiffs Radian Asset Assurance, Inc.'s voluntary dismissal of: (i) its claims against Defendant Christian Brothers of the College of Santa Fe Community ("Christian Brothers"), which has not appeared or answered, without prejudice and without any award of costs or fees to any party; and (ii) Radian Asset's second claim for relief -- contractual indemnification -- against Defendant College of the Christian Brothers of New Mexico d/b/a the College of Santa Fe without prejudice and without any award of costs or fees to any party with respect to that claim. The College of Santa Fe opposes Radian Asset's Motion to the extent that Radian Asset seeks dismissal of its contractual indemnification against the College of Santa Fe

without prejudice. See Defendant College of the Christian Brothers of New Mexico, Known as the College of Santa Fe's Response in Partial Opposition to Plaintiff's Motion for Voluntary Dismissal and Supporting Memorandum [Doc. No. 312] at 2, filed January 24, 2011 (Doc. 327). The College of Santa Fe requests that the Court dismiss Radian Asset's contractual indemnification claim against it with prejudice, or that, in the alternative, the Court order that Radian Asset cannot refile the claim in this case. At the hearing, the Court proposed dismissing Radian Asset's contractual indemnification claim against the College of Santa Fe without prejudice, but ordering that Radian Asset cannot bring its contractual indemnification claim against the College of Santa Fe in this case. Radian Asset thereby could bring its claim in the future, but not in these proceedings. Radian Asset and the College of Santa Fe agreed to this proposal. The Court therefore grants Radian Asset's Motion, subject to the Court's proposed condition.

IT IS ORDERED that: (i) Plaintiff Radian Asset Assurance Inc.'s Motion for Voluntary Dismissal and Supporting Memorandum, filed January 7, 2011 (Doc. 312), is granted; and (ii) Plaintiff Radian Asset Assurance, Inc. may not bring its contractual indemnification claim against Defendant College of the Christian Brothers of New Mexico d/b/a the College of Santa Fe in this case.



UNITED STATES DISTRICT JUDGE

Counsel:

Daniel J. O'Friel
 Pierre Levy
 Aimee Sue Bevan
 O'Friel and Levy
 Santa Fe, New Mexico

-- and --

Jeffrey R. Brannen
Jeffrey R. Brannen, P.A.
Santa Fe, New Mexico

-- and --

Gavin W. Skok
John D. Lowery
Riddell Williams, P.S.
Seattle, Washington

Attorneys for the Plaintiff

Clifford K. Atkinson
Douglas A. Baker
Justin Duke Rodriguez
Atkinson, Thal & Baker, P.C.
Albuquerque, New Mexico

*Attorneys for Defendant College of the Christian Brothers of New Mexico and
Christian Brothers of the College of Santa Fe*

W. Spencer Reid
Benjamin F. Feuchter
Keleher & McLeod, P.A.
Albuquerque, New Mexico

Attorneys for Defendant Sharon Bain

Joe L. McClaugherty
Tamara R. Safarik
McClaugherty & Silver, P.C.
Santa Fe, New Mexico

Attorneys for Defendant Jerry Brisson

Michael W. Brennan
Brennan & Sullivan, P.A.
Santa Fe, New Mexico

Attorneys for Defendant Mark Lombardi